

Middlesex University Research Repository

An open access repository of

Middlesex University research

<http://eprints.mdx.ac.uk>

Ruggiero, Vincenzo ORCID logo ORCID: <https://orcid.org/0000-0002-4090-849X> (2015) Ethics and the crimes of the powerful. Howard Journal of Criminal Justice, 54 (1) . pp. 42-56. ISSN 0265-5527 [Article] (doi:10.1111/hojo.12113)

First submitted uncorrected version (with author's formatting)

This version is available at: <https://eprints.mdx.ac.uk/14320/>

Copyright:

Middlesex University Research Repository makes the University's research available electronically.

Copyright and moral rights to this work are retained by the author and/or other copyright owners unless otherwise stated. The work is supplied on the understanding that any use for commercial gain is strictly forbidden. A copy may be downloaded for personal, non-commercial, research or study without prior permission and without charge.

Works, including theses and research projects, may not be reproduced in any format or medium, or extensive quotations taken from them, or their content changed in any way, without first obtaining permission in writing from the copyright holder(s). They may not be sold or exploited commercially in any format or medium without the prior written permission of the copyright holder(s).

Full bibliographic details must be given when referring to, or quoting from full items including the author's name, the title of the work, publication details where relevant (place, publisher, date), pagination, and for theses or dissertations the awarding institution, the degree type awarded, and the date of the award.

If you believe that any material held in the repository infringes copyright law, please contact the Repository Team at Middlesex University via the following email address:

eprints@mdx.ac.uk

The item will be removed from the repository while any claim is being investigated.

See also repository copyright: re-use policy: <http://eprints.mdx.ac.uk/policies.html#copy>

Ethics and the Crime of the Powerful

Vincenzo Ruggiero
Middlesex University
London
UK

Introduction

After a schematic overview of approaches to the study of the crimes of the powerful, this paper assesses how ethics can provide supplementary tools for the analysis of the subject matter. Powerful offenders, in the argument presented below seek justification for their conduct through a selective interpretation of classical Western philosophy and by adhering to some aspects of canonical political thought. This interpretive process is led by the purpose of expanding their social opportunities, including opportunities for further offences, while making the latter acceptable to their peers and others. The process entails the implicit claim that offences are, in fact, respectful of the very norms being violated.

State agents and economic actors

We may isolate the first set of conceptualizations of the crimes of the powerful as those arising from the analysis of the state. Particularly focused on violence, these conceptualizations see the crimes of the powerful as original foundational events, as secular forms of Promethean acts leading to state formation. These acts, it is argued, constitute authorized force and amount to law-making violence. They can be foundational, when they establish new systems and designate a new authority. But they may also amount to law-conserving violence, when they protect the stability of systems and reinforce authority (Derrida, 1992; Benjamin, 1996). Tilly's (1985) work is, in this respect, well known for its emphasis on the centrality of direct organized force to the process of state-making (Whyte, 2009). The crimes of the powerful, from this perspective, give us a picture of how power is formed and distributed within society and how such distribution can be altered (Geis and Meier, 1977). Pursuing this strand of analysis some scholars have looked at extra-legal activities of the modern state and how these can be located within legal-political theory (Sabuktay, 2009), while other experts of state crime in general have remarked that the core capitalist states remain the greatest source of state-supported harm, violence and injury (Rothe and Ross, 2009).

It is in contributions pertaining to the economic sphere, and indeed to capitalism, that we find the second set of concepts. Re-reading Frank Pearce's (1976) seminal book, one notes that it took the author more than seventy pages before 'audaciously' introducing the phrase 'crimes of the powerful'. At stake was the delineation of a theoretical paradigm which, while incorporating some elements of the sociology of

deviance of the time, intended to decisively supersede it. Hence Pearce's appreciation of labeling theory but also his sustained criticism of Lemert's analysis of radicalism, which according to the latter was represented by 'structurally marginal people [who] cannot influence others through any rational methods but only through propaganda, manipulation, infiltration and distortion' (ibid: 31). Pearce's radicalism, on the other hand, was based on variables and concepts belonging to classical Marxism such as mode of production, surplus value and class struggle. Conflict as an explanatory variable, therefore, inevitably became paramount for the analysis of the crimes of the powerful, in that definitions of crime themselves were deemed the result of battles engaged in the legal arena, with more powerful individuals and groups distancing themselves from imputations of criminal conduct while attributing them to the powerless. Finally, Pearce specified that, after starting his analysis of corporate crime within a very legalistic framework, he was forced to progressively move away 'from the confines of positive criminology', and in analysing crimes of corporation he was 'ultimately led to ask fundamental questions about the nature of American and the world's free enterprise system' (ibid: 105).

To be sure, the work produced on the subject matter throughout the 1970s into the 1990s built on the solid foundations laid down by Sutherland (1983), who described corporations as recidivist offenders and concluded that disadvantage as well as privilege may instigate learning processes leading to crime. In the last analysis, looking at the social damage caused by corporate actors, it is legitimate to wonder why the focus on conventional crime historically adopted by criminology is still prevailing.

Anomie, control and techniques of neutralization

Supplementing approaches centred on state formation or focused on economic variables, are perspectives inspired by criminological theory itself. Anomie and control theory, for example, have both been mobilized to explain the crimes of the powerful. The former may posit that the settings in which the elite operates are already largely normless, thus encouraging experimental conducts and allowing for the arbitrary expansion of practices. Passas (2009: 153), for instance, argues that pressure to attain goals are constantly experienced by people in the upper social reaches, and that, therefore, 'they are far from immune to pressures towards deviance'. Control theory, in its turn, has suggested that a number of characteristics belonging to offenders may explain all types of crimes, be these committed by powerful or powerless individuals. Such characteristics include physical as well as psychological traits ranging from impulsivity and recklessness to the incapacity to delay gratification and a propensity to blame others first and oneself last (Gottfredson and Hirschi). Sykes and Matza's techniques of neutralization appear to lend themselves ideally to explanatory efforts addressed to the crimes of the powerful. For instance, such techniques may be used to deny that powerful offenders cause harm or victimize specifically identifiable subjects, to claim that other conducts are far more harmful than those one adopts, or that in any case whatever conduct one adopts this expresses a form of loyalty to one's social group and, therefore, cannot be deemed criminal.

Organizations and their members

An important strand of analysis focuses mainly on micro-sociological aspects, for example observing the dynamics guiding the behaviour of organizations and their members. As organizations become more complex, responsibilities are decentralized, while their human components find themselves inhabiting an increasingly opaque environment in which the goals to pursue and the modalities through which one is expected to pursue them become vague and negotiable. Organizations may be 'mechanistic' or 'organic', the former operating in conditions of relative stability, the latter adapting themselves to changing conditions (Burns, 1963). Illegal practices may be the outcome of such changing conditions, as organizations are required to incessantly devise new ways of reaching their ends and, consequently, to innovate by reinventing or violating rules. Organizations, on the other hand, are composed of individuals and groups pursuing their own interests although internal conflicts are rarely officially displayed and are hidden behind public images of harmony (Dalton, 1959; Mouzelis, 1967). Alliances taking shape and dissolving, contingent interests, and a permanent antagonistic climate characterize the daily existence of organizations, whose goals are as indefinite as is the outcome of the power struggles taking place within them.

By 'decoupling themselves' from their constituent parts organizations attempt to meet their goals while operating in a highly unpredictable environment. In this way they assume 'a structure consisting of loosely coupled entities' (Keane, 1995: 169). The different entities keep a relative independence, and a loosely coupled structure allows organizations to deal with the vagaries of business. Decoupling, particularly encouraged by geographical expansion, mergers and acquisitions, also entails that the parent companies dissociate themselves from the practices adopted by their subsidiaries or partners. Where such practices are illegal, organizations may therefore claim their innocence and invoke ignorance of the type of operations being conducted by subsidiaries or partners.

In further developments, attempts have been made to merge macro- and micro-levels of analysis, leading to the growing inclusion in the study of the crimes of the powerful of formal and complex organizations. These types of crimes are equated to manifestations of 'situated action', and explanatory efforts have addressed how contextual cultures affect decisions to violate laws (Vaughan, 2007). Cultural rules, it is argued, define legitimate goals and determine action and meaning. In the economic sphere actors experience a relative autonomy whereby agency determines whether obligations to obey the law or to follow business norms justifying violations prevail (Aubert, 1956). This is consistent with Sutherland's (1983) theory of differential association, whereby individuals learn within their own professional enclave the techniques and the rationalisations necessary to deviate. Organizations and their members, however, may not simply follow a rational choice model, but find motivation for offending within the uncertain position in which they feel they are situated. More than sheer greed or striving for success, offenders experience anxiety and 'fear of falling' or 'status panic', as organizations and their members try to either rise, remain the same, or fall in the rank of the organizational system (Vaughan, 1983). It is within this culture of anxiety and panic that offenders are made to feel conformist, rather than deviant, in relation to their own professional setting. Offending, in this sense, is not the result of calculated choice, but the routine outcome of an organizational culture which tends to normalize deviance.

It should be noted that this consideration is far removed from the analytical field of 'techniques of neutralization', the latter indicating that offenders are aware that their acts are wrong and try to justify them. On the contrary, when deviance is normalized,

the conduct is not seen as wrong, nor is it concealed from other members of the organization: 'it is, in fact, culturally approved and therefore rewarded' (Vaughan, 2007: 12).

According to this analysis, therefore, violations are encouraged less by the 'objective' dynamics of the free enterprise system than by the contingent economic and political conditions. Economic actors may, in fact, be led to offend by their own assessment of their immediate financial circumstance, by their forecast of future economic development, and by their perception that their acts will be met with impunity (Yeager, 2007). In a related analysis both the social power and risk-taking attitude of materially privileged classes are pinpointed as crucial variables contributing to crime and delinquency. Such classes, moreover, inhabit specific *generative worlds* guided by key cultural elements facilitating criminality: unbridled competition, a pervasive sense of arrogance, and an ethic of entitlement. According to Shover (2007: 88), these are among the reasons why 'not only taverns and jails but also worlds of privilege and corporate offices can be breeding grounds for transgression'. With the variable 'competition' we find an echo of previous analyses focused on free market economies as criminogenic environments. The variable 'arrogance', in turn, alludes to the confidence accumulated through 'the habit to give orders' and the insolence gained through the lack of defiant responses. Finally, 'entitlement' implies offenders believing that external forces interfere with their just desert, namely their right to pursue wealth without external restraint. 'What is instructive about this is confirmation that an *ethos* of entitlement can become so pervasive among occupational practitioners or organizational managers that it becomes taken for granted and erodes willingness to comply with law' (ibid: 92, *my italic*).

The word *ethos* as used in the quotation above is not merely associated with the principles guiding market economies, that is with the maximization of profits or with the related justification of self-love provided by Adam Smith. Ethos, here, refers precisely to the domain of ethics as drawn by the classics of Western philosophy, to the distinction between right and wrong postulated by Plato, Pascal, Hume, Kant, Hegel and many others who compose the history of Western thought.

In the following pages, a journey through this thought is attempted in order to locate the crimes of the powerful within our very philosophical tradition. As I will suggest, the crimes of the powerful are both within and without this tradition, while the elite is engaged in a permanent attempt to read that tradition in a way that may justify the practices it adopts.

Reason and passions

Let us start with the idea of justice. In Plato and Aristotle, justice is mainly an individual virtue, which nevertheless only finds complete realization within a human community (Plato, 1937; 1970; Aristotle, 1934). Injustice, on the other hand, is a vice, and unjust people are said to be unhappy and live miserably. One may object that contemporary powerful offenders, while unjust, are likely to live well and happily. But a classical objection to the Platonic view of justice comes from classical philosophy itself. Glauco, for instance, believes that right and wrong are determined by a social contract, namely by conventional collective agreements and that the distinction between the two is merely artificial. A just conduct, therefore, may be the result of fear of the consequences the violation of a contract entails. Because of the artificial nature of the distinction, moreover, one is perfectly entitled to pretend to act justly while committing all sorts of injustices, also because the gods are not involved in this conventional

human contract and appropriate sacrifices and propitiatory ceremonies will suffice to ensure the beneficial divine assistance (De Pascale, 2010). Deceit, in brief, pays even with the gods.

The crimes of the powerful sit perfectly at ease within this philosophical reasoning, as powerful offenders can claim that the norms they violate are mere conventional prescriptions and that, therefore, their conduct cannot be judged as intrinsically unethical. Other classical notions, however, are met with implicit rejection by powerful offenders.

Justice, as we have seen, is an individual virtue, a personal disposition, but is also referred to the collectivity as a whole. Take the Aristotelian distinction. Distributive justice, in his argument, implies the sharing of riches, honours and all the other divisible items among those enjoying the status of citizens. Corrective or regulatory justice, on the other hand, governs social relationships, and intervenes when equity is to be restored. For example, in the face of unacceptable conduct, it weighs the harm produced and re-establishes the previous conditions, neutralizing that harm (Aristotle, 1934). Powerful offenders could not be further removed from both types of justice, as their offending does not lead to 'sharing' the 'honours and all the other divisible items' with citizens, but rather to their increased polarization. Nor does corrective justice affect them, as proven by the wide range of modalities they constantly devise to escape it. It could be added that, frequently, they also radically deviate from Plato's concept of the Republic, which 'belongs to the people', is not a random agglomerate of individuals, but 'a collective association brought together by the common good'. 'The law does not consist of what is beneficial to the powerful' (Plato, 1937: 134).

It is in relation to this last statement that powerful offenders might develop their defence. Thrasymachus contests Plato's concept of norms as necessary tools to govern and avoid *anomia*, arguing that law is a therapy imposed on subordinates for the interest of those in authority. Fearing social disunity, Plato looks for norms 'to which the master no less than the man will submit' (Gouldner, 1967: 297). By contrast, Thrasymachus, perhaps the first conflict theorist in the history of Western thought, affirms that 'the just is nothing else that the advantage of the stronger' (Plato, 1937: 39). In his view, by legislating, the elite proclaims that what is right in the mind and practices of the rulers is also right to the ruled. The crimes of the powerful are embedded in this dilemma, namely in the process whereby rules of morality – and of law – are socially constructed and enacted. Such views may vary considerably and organizational morality is as variegated as moral theory itself (Yeager, 1995). In brief, powerful groups structure their own alternative moral reasoning with a view to finding inspiration or justification for their behaviour. In this way they adhere both to Plato, claiming that rules are beneficial to all, and to Thrasymachus, in practice implying that rules serve the interest of those in authority.

Powerful groups and individuals are as concerned as anybody else about how their behaviour affects others. Their evaluation of right and wrong, in this respect, may follow one of the competing logics, available to everyone, which guide moral decision-making. They may follow a consequentialist type of reasoning, thus focusing on the outcome of their moral choice, or elaborate deontological arguments, therefore focusing on the morality of the means adopted and the normative constraints established, irrespective of outcomes. From a consequentialist perspective, 'noble wrong-doing' is acceptable when aimed at collective beneficial outcomes which could not be achieved through rightful conduct (Mendus, 2009). On the other hand, deontological arguments do not apply to powerful offenders, who do not believe that the means they adopt should reflect conventional morality nor that normative constraints are just. By following a consequentialist logic, however, they seem to endorse an argument brilliantly elaborated by David Hume (2001), which is worth summarizing.

Hume poses the question whether it is by means of our ideas or our ‘impressions’ that we distinguish between vice and virtue. Reason in his view is ‘perfectly inert, and can never either prevent or produce any action or affection’ (ibid: 399). It is true, Hume continues, that reason can influence our conduct, but only in the sense that it can excite a passion and teach us how to pursue it. The crimes of the powerful, similarly, are not simply determined by reason, but also by the discovery of a cause-effect mechanism whereby certain acts may be utilized to pursue passion, for example in the form of gains. No passion can be termed unreasonable, according to Hume, unless it chooses the wrong means to achieve its ends. Here, Hume seems to postulate a variant of what in criminology are termed learning theories, namely that professional subcultures lead to the realization that certain means will lead to exercise one’s passions and, at the same time, to the discovery of yet new potential objects of passion. In conclusion, reason can never motivate actions of the will and can never oppose passion in the direction of the will: ‘Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger’ (ibid: 416). Powerful offenders may well appropriate this principle and justify their conduct with a universal, human need to follow an increasing variety of passions and learn how to pursue them in constantly new fashions.

The concept of normalization briefly discussed above indicates that it is a specific occupational community that designates, in the last analysis, which act committed by its members is criminal and which is not. This concept echoes Hume’s argument around the origin of our sense of disapprobation. Where does this sense derive from in the face, for instance, of a murder? Not from reason, reiterates Hume, because however we examine the fact ‘murder’ we do not find something we are able to associate with vice. ‘In whichever way you take it, you find only certain passions, motives, volitions and thoughts; the vice entirely escapes you’ (ibid: 469). You need to ‘turn your reflection into your own breast’, and there you will find a sentiment of disapprobation arising towards that action. Right and wrong, therefore, are determined by feelings, they lie in us, not in external objects or actions. By describing something as vicious, we only reveal our own nature and our reaction to events. ‘Vice and virtue, therefore, may be compared to sounds, colours, heat and cold, which are not qualities in objects, but perceptions in the mind’ (ibid: 469). Morality, ultimately, can be felt, not judged.

Powerful offenders find moral support in this analysis of subjectivity proposed by Hume, according to whom ‘morality is not susceptible to demonstration’ and moral certainty cannot be established with the help of sciences such as ‘geometry or algebra’ (ibid: 404). In this sense, the crimes of the powerful escape objective categories and qualifications and can only be deemed ‘crimes’ when they arouse a sense of revulsion, a passion linked with feelings of justice and injustice. But these feelings, as we have seen, would tend to wither away when the crimes of the powerful become normalized.

Opponents of this line of reasoning are numerous and include Immanuel Kant, whose philosophy has not ceased to exert influence on contemporary thinking. Kant’s qualification of ‘good’ is closely linked to the notion of ‘good will’, therefore a central element of agency persists in his analysis of morality which seems to echo Hume’s emphasis on subjectivity. What radically separates the two, however, is the relevance they respectively attribute to reason. In Kant, all human qualities, for instance intelligence, wit, judgment, ‘and the other talents of the mind’, but also courage, resoluteness, and perseverance are, doubtless, good and desirable. ‘But they can become extremely bad and harmful if the will, which is to make use of these gifts

of nature, is not good' (Kant, 1994: 123). The Kantian will is shaped by reason rather than feelings, and 'moderation in emotions and passions, self-control, and calm deliberation' are achieved through logical association of thoughts and practical ideas.

Misology, or hatred for reason, arises from the assumption that the more a person is cultivated the less she will enjoy life and pursue happiness. Hence a form of envy for 'the common run of men who are better guided by mere natural instinct and who do not permit their reason much influence on their conduct' (ibid: 125). For Kant, reason is given to us as a practical faculty, one which is meant to have a crucial influence on the will. 'As nature has elsewhere distributed capacities suitable to the functions they are to perform, reason's proper function must be to produce a will good in itself' (ibid). The key variable designating good will, however, is a sense of duty. So, for instance, in commercial interactions individuals behave in certain ways for the sake of their own advantage, and their selfish purpose is devoid of any sense of duty. For actions to possess a moral worth, instead, they have to be inspired by a principle of volition which transcends 'the objects of the faculty of desire' (ibid: 128). Moreover, there is in Kant a total coincidence between duty and the law, as 'the moral worth of an action does not lie in the effect which is expected from it... the pre-eminent good can consist only in the conception of the law itself' (ibid: 129).

Within this analytical framework, powerful offenders would find it hard to justify their conduct, unless they claim their propensity towards misology, namely a type of unreasonableness that criminologists would associate with lack of self-control (Gottfredson and Hirschi, 1990). On the other hand, a technique of neutralization available to them might include the claim that duty and law do not coincide, thus reiterating Thrasymachus's argument about the artificial nature of norms of conduct. Their own duty, they may assert, is to maintain stability in the system, irrespective of the means utilized, a stability which is guaranteed through the perpetuation or the accretion of their power. As for the law, this may well be depicted as an obstacle to individual freedom, a cumbersome machinery stifling political and economic initiative. Surely, powerful offenders are deeply anti-Kantian, as they see no connection between law and duty, nor can they claim 'moderation in emotions and passions, self-control, and calm deliberation'. An option available to them, however, is to seek legitimacy through an opportune, self-serving use of Hegel's arguments on morality, to which we will now turn.

Hegel (1952: 89) labels Kant's analysis an example of empty formalism, which 'reduces the science of morals to the preaching of duty for duty's sake'. Moral value, in his view, is not an abstract entity, but can only be established in contradiction or in correspondence to a principle. For example, if we presuppose that property and human life are to exist and be respected, 'then indeed it is a contradiction to commit theft or murder'. Will and duty, therefore, have to be referred to specific principles and their contents, otherwise they end up lying on formal, hollow values. Hegel's idea, in brief, is that morality is not simple rectitude in the sense of respect for the law, but possesses its own intrinsic value in relation to a specific 'ethical community'. Once such community is taken as a guiding background, the set of norms, duties, sensibilities and common understandings that inform it will indicate what is virtuous behaviour and what is vice. 'It is easy to say what man must do, what are the duties he has to fulfil in order to be virtuous: he has simply to follow the well-known and explicit rules of his own situation' (ibid: 90). We may conclude, therefore, that powerful offenders, once they identify with the 'actual order' informing their 'own situation', can claim that their 'general mode of conduct' corresponds to common expectations, 'habitual practice and custom' (ibid).

Profit maximisation, amoral calculation and commercial competition have been thoroughly and originally discussed in relation to the crimes of the powerful, particularly in the economic sphere (Slapper and Tombs, 1999). The focus here, however, is on philosophical arguments which are able to rescue powerful offenders, providing them with subtle justifications for their acts. What we have seen so far is a possible use of such arguments which surpasses in effectiveness any technique of neutralization identified by criminologists. Hume, Kant and Hegel, of course, are far from inciting or justifying immoral conduct, although those who adopt such conduct may well purge their conscience by way of arbitrarily interpreting their thoughts. These thoughts, on the other hand, lend themselves to the exercise proposed in the previous pages, where the effort has been made to unravel what is hidden, nuanced, disguised or implicit. Fewer nuances are found, instead, in the thinkers examined below, who make explicit references to how immorality can be readily legitimized. In Pascal and Machiavelli, as I will try to show, powerful offenders may find what they interpret as unambiguous enticements to ethical and normative violations.

From Pascal to Machiavelli

In a broad distinction within ethics, as we have seen, we may identify thinkers who judge an act right or wrong in accordance with whether it produces the best consequences, and thinkers who judge actions against some pre-established rule or principle (Singer, 1994). Blaise Pascal belongs to the former group and clearly describes a collective mechanism turning vice into its opposite. He identifies the ‘marvellous principle, so important in our morality, of *directing the intention*’ (Pascal, 1967: 102). According to this principle, intentional actions can be stripped of the evil they cause and turned into acceptable acts. In an exemplar case Pascal remarks that we do not tolerate those who are determined to sin just for the sake of sinning: we find them diabolical. But if we put into practice the method of ‘directing the intention’, we may discover that even the action of sinning can be granted a virtuous character. When unable to prevent actions we can at least correct the viciousness of their means by establishing the purity of their ends.

‘This is how our Fathers have found a way to permit the acts of violence commonly practiced in the defence of honour. For it is only a question of deflecting ones intention from the desire for vengeance, which is criminal, and applying it to the desire to defend one’s honour, which according to our Fathers, is lawful’ (ibid: 110).

Pascal’s argument displays some similarity with the political thinking of Niccolò Machiavelli, a founding master of consequentialist arguments that are still widely endorsed.

Machiavelli describes Ferdinand of Aragon as the man who accomplished great things under the cloak of religion, but who in reality had no mercy, faith, humanity, or integrity; and who, had he allowed himself to be influenced by such qualities, would have failed to accomplish anything. Telling the story of Agathocles, he concedes that ‘It cannot be called talent to slay fellow-citizens, to deceive friends, to be without faith, without mercy, without religion; such methods may gain empire, but not glory’ (Machiavelli, 1944: 68). Still, he does not see why Agathocles should be esteemed less than the most notable and heroic of captains. Wisely, Agathocles caused injuries in one stroke, all at one time, thus avoiding the repetitive infliction of harm on a

regular basis. Also, he obtained sovereignty without the assistance of the nobles, who would have been unmanageable allies, but with the support of the people, and ‘he who reaches sovereignty by popular favour finds himself alone, and has none around him, or few, who are not prepared to obey him’ (ibid: 74).

After arguing that leaders acting entirely in the name of virtue ‘will be destroyed’, he encourages the prince to develop skills in ‘doing wrong and make use of them or not according to necessity’. ‘If everything is considered carefully, it will be found that something which looks like virtue, if followed, would be his ruin; whilst something else, which looks like vice, yet followed brings him security and prosperity’ (ibid: 119). Machiavelli’s acumen is then revealed in this analysis of consensus, which under some circumstances we would today describe as populism. It is not true therefore that building on the people is like building on mud, he remarks, adding some insights as to how even the crimes of the powerful can enjoy some form of popular consensus along with practical and ideological support. For example, the prince who engages in extra-legal activity, such as ‘pillage, sack, and extortion’, is advised to be ‘liberal’, and to handle that which belongs to others with generous altruism: a fair distribution of the bounty among his followers is highly recommended. Machiavellian powerful offenders, in other words, have to find the way of manipulating the variable ‘benefit’ so that the outcomes of their illegality will appear to be advantages to others as well as themselves. Examples may be entrepreneurs who ignore the rules of fair competition claiming that by doing so they safeguard the jobs of their employees; or states which engage in cruelty against enemies and dissenters explaining that in this way they ensure the security and safety of citizens. This, again, is perfectly consonant with Machiavelli’s teaching, according to which the only thing a Prince has to avoid is hatred on the part of his subjects, whereas cruelty, by causing fear, increases social cohesion.

Habit, opportunities and trust

Powerful offenders, in the argument presented so far, can find justification for their conduct through a selective interpretation of classical philosophy and of some aspects of canonic political thought. This interpretive process is led by the purpose of expanding their social opportunities while making their conduct acceptable as inherited custom. Let us explicate this point.

Opportunities define the set of choices available to actors, who can expand their own and/or attempt to restrict those of others. Opportunities shape preferences, which in their turn shape the pursuit of outcomes through interaction (Hedström and Bearman, 2012). The crimes of the powerful constitute interactions aimed at expanding the opportunities of the offenders while eroding the possibility of collective control and institutional constraint. Being elastic rather than fixed (Petersen, 2012), opportunities need not deliver a constant amount of social advantage, but may be used as a form of investment granting increasing privileges and, simultaneously, neutralizing those social forces which pursue equality. The more unequal the distribution of opportunities, the more hopeless the efforts addressed towards equality, in an expansionist dynamic which involves power in general along with powerful offenders. The concept of normalization fails to capture this expansionist logic, as it implies a stationary condition rather than a constantly ‘evolutionary’ one. Powerful offenders, through their illegal conduct, set ethical precedents which are liable to be superseded by yet new illegal conducts, in a process involving the permanent evolution of habit.

Moral sense or conscience is said to mark the most important difference between humans and the lower animals. 'This sense has a rightful supremacy over every other principle of human action; it is summed up in that short but imperious word "ought", so full of high significance' (Singer, 1994: 44). The most noble of all attributes of humans, this moral sense is acquired and developed through images of past actions and motives, it is strengthened by habit and ultimately by the perception that such past actions enjoy the positive judgment of the community. There is no divine origin in ethics, but a form of 'community super-ego' left by persons and actions which become exemplary in the imagination of its members. Powerful offenders develop their own collective super-ego informing their practices, their views, expectations and interactions with others. In this way they attempt to turn meta-ethics into normative ethics. The first type of ethics implies judgments external to events and absence from the contexts in which events take place.

'The term meta-ethics implies that we are not taking part in the practice of ethics itself, but are reflecting on that practice, as if from a different level from which we can view it as a whole, and see what is going on when people are, say, arguing about the right and wrong' (ibid: 10).

At the level of meta-ethics we might ask whether there could possibly be a true or correct answer to the questions within ethics. On the other hand, to take part in discussions about substantive issues is to engage in normative ethical argument and to create arguments qualifying the nature of one's participation in events. This implies choice of values, rules, standards, or principles that should guide our decisions about what we ought to do. In this way, powerful offenders isolate their illicit practices from meta-ethics, reducing those practices to sheer normative choice.

While creating custom and habit, however, powerful offenders have to deal with the variable trust. This can be achieved through competence or reliability, for example conveying images of integrity, honesty, and the commitment to do no harm. In this case, trust is cognitive-based, in the sense that it stems from past experience that informs us on the likelihood of an individual or group to act ethically and live up to their legal obligations (Cook and Gerbasi, 2012). Of course, powerful offenders cannot be accorded cognitive trust, as past experiences make them untrustworthy. This is compounded by the fact that, normally, it is not easy to grant trust in power-asymmetric relationships. The only option for powerful offenders is, therefore, to seek 'affective trust', namely the confidence individuals place in others on the basis of feelings generated by interactions with them. This affective trust is a form of ideology and, in our case, amounts to offenders convincing other groups and individuals that their interests are the same as their own and that all benefit from illegality. Implicit in the creation of affective trust is a notion of hegemony and consensus, which preside over the formation of internalized forms of cooperation and acceptance. Power always needs an amalgam of consensus and coercion, aiming at building trust and repelling imputation of criminality, in brief at constructing images of 'trusted criminals' (Friedrichs, 2004). This process may be smoothed by the fact that, paradoxically, trust in individuals may decline while trust in the institutions and ideologies they represent may not. Simultaneously, trust networks, of cognitive as well as of an affective type, 'can emerge to facilitate social and economic exchange under uncertainty, but can also emerge to support corruption and other forms of illegal activity' (ibid: 232). The crimes of the powerful, in this way, become organized and regularized, and due to repeat dealings through social networks, they become commonplace and left unchallenged (Cartier-Bresson, 1997).

Conclusion

An ethical interpretation of the crimes of the powerful shows the vagueness of ethics itself and illustrates the efforts by offenders to claim philosophical affiliation to this or that aspect of classical thinking (Ruggiero, 2012). We have seen how an ambiguous reading of Hume, Kant, Hegel, Pascal or Machiavelli may lead to justifications for offending that are potentially much more effective than ex-post techniques of neutralization invoked in criminology. We have also seen the centrality of consensus, legitimacy and hegemony, as powerful offenders attempt to mobilise the complicity or acceptance by other actors, implying that their acts are beneficial to others as well as to themselves. By re-directing their intention, as Pascal would have it, they try, in other words, to sanctify their choices by establishing the purity of their goals. This process may lead offences to become part of custom and habit, in an evolutionary, expansionary tendency resulting in new and increasingly harmful illicit conducts.

Every justification of authority is based on the fragility of humans, from Hobbes to Kant. The former abolishes society and communities, including relationships within them, replacing these with pure power relationships, namely between individuals and sovereign. The latter regards humans as made of crooked wood, incapable of morality, unless constrained by laws. Power, therefore, being the result of human fragility, reflects this fragility, being itself like unmanageable crooked wood (Esposito, 2006). It would be a mistake, however, to claim that the crimes of the powerful can also be deemed the outcome of such fragility. In this paper, the attempt has been made to prove that classical ethics may add strength to already strong actors and groups. Such groups possess a subjective set of dispositions, a lasting pattern of thought, perception, and behaviour which at times overlap with some aspects of classical philosophical thought, in a way that makes their deviance appear, in fact, as a mode of adhering to that noble tradition of thought. Their *habitus*, acquired through internalization of culture and embodied in a set of practical skills (Vaughan, 2012; Bourdieu, 1984; 1990), leads to an enhancement of their position in society: it is a *habitus* that incorporates licit as well as illicit procedures and justifications. Ultimately, the crimes of the powerful contribute to the reproduction of the power structure in society while seeking ethical neutralization by claiming consonance with the very norms being violated.

References

- Aristotle (1934), Nicomachean Ethics, Cambridge: Harvard University Press.
- Aubert, V. (1956), 'White-Collar Crime and Social Structure', American Journal of Sociology, 58: 263-271.
- Benjamin, W. (1996), 'Critique of Violence', in Selected Writings, Harvard: Harvard University Press.
- Bourdieu, P. (1984), Distinction, Cambridge: Harvard University Press.
- Bourdieu, P. (1990), The Logic of Practice, Stanford: Stanford University Press.

- Burns, T. (1963), 'Industry in a New Age', New Society, 31 January: 17-20.
- Cartier-Bresson, J. (1997), 'Corruption Networks, Transaction Security and Illegal Social Exchange', Political Studies, 45: 463-76.
- Cook, K.S. and Gerbasi, A. (2012), 'Trust', in Hedström, P. and Bearman, P. (eds), The Oxford Handbook of Analytical Sociology, Oxford: Oxford University Press.
- Dalton, M. (1959), Men Who Manage, London: Wiley.
- De Pascale, C. (2010), Giustizia, Bologna: Il Mulino.
- Derrida, J. (1992), 'Force of Law: The Mystical Foundation of Authority', in Cornell, D., Rosenfeld, M. and Gray Carlson, D. (eds), Deconstruction and the Possibility of Justice, London: Routledge.
- Esposito, R. (2006), Communitas. Origine e destino della comunità, Turin: Einaudi.
- Friedrichs, D.O. (2004), Trusted Criminals: White Collar Crime in Contemporary Society, Belmont: Thomson/Wadsworth.
- Geis, G. and Meier, R. (eds) (1977), White-Collar Crime: Offences in Business, Politics and the Professions, New York: Free Press.
- Gottfredson, M. and Hirschi, T. (1990), A General Theory of Crime, Stanford: Stanford University Press.
- Gouldner, A. W. (1967), Enter Plato: Classical Greece and the Origins of Social Theory, London: Routledge and Kegan Paul.
- Hedström, P. and Bearman, P. (eds) (2012), The Oxford Handbook of Analytical Sociology, Oxford: Oxford University Press.
- Hegel, F. (1952), The Philosophy of Right, Oxford: Clarendon.
- Hume, D. (2011), 'Of Morals', in Hume, D., The Essential Philosophical Works, London: Wordsworth.
- Kant, E. (1994), 'Pure Practical Reason and the Moral Law', in Singer, P. (ed), Ethics, Oxford: Oxford University Press.
- Keane, C. (1995), 'Loosely Coupled Systems and Unlawful Behaviour: Organization Theory and Corporate Crime', in Pearce, F. and Snider, L. (eds), Corporate Crime. Contemporary Debates, Toronto: Toronto University Press.
- Machiavelli, N. (1944), The Prince, London: J.M. Dent & Sons.
- Mendus, S. (2009), Politics and Morality, Cambridge: Polity.

- Mouzelis, N.P. (1967), Organization and Bureaucracy. An Analysis of Modern Theories, London: Routledge & Kegan Paul.
- Pascal, B. (1967), Provincial Letters, Harmondsworth: Penguin.
- Passas, N. (2009), 'Anomie and Corporate Deviance', in Whyte, D. (ed), Crimes of the Powerful: A Reader, Maidenhead: Open University Press.
- Pearce, F. (1976), Crimes of the Powerful. Marxism, Crime and Deviance, London: Pluto.
- Petersen, T. (2012), 'Opportunities', in Hedström, P. and Bearman, P. (eds), The Oxford Handbook of Analytical Sociology, Oxford: Oxford University Press.
- Plato (1937), The Republic, London: William Heinemann.
- Plato (1970), The Laws, Harmondsworth: Penguin.
- Rothe, D.L. and Ross, J.I. (eds) (2009), 'State Crime', special issue of Critical Criminology, 17.
- Ruggiero, V. (2012), 'Giustizia, moralità e impresa secondo il metodo mafioso', Studi sulla Questione Criminale, VII: 9-20.
- Sabuktay, A. (2009), 'Locating Extra-Legal Activities of the Modern State in Legal-Political Theory: Weber, Habermas, Kelsen, Schmitt and Turk', Crime, Law and Social Change, 51: 511-530.
- Shover, N. (2007), 'Generative Worlds of White-Collar Crime', in Pontell, H.N. and Geis, G. (eds), International Handbook of White-Collar and Corporate Crime, New York: Springer.
- Singer, P. (ed) (1994), Ethics, Oxford: Oxford University Press.
- Slapper, G. and Tombs, S. (1999), Corporate Crime, Harlow: Pearson.
- Sutherland, E. (1983), White Collar Crime: The Uncut Version, New Haven: Yale University Press.
- Tilly, C. (1985), 'War Making and State Making as Organized Crime', in Evans, P.B., Rueschmeier, D. and Skocpol, T. (eds), Bringing the State Back In, Cambridge: Cambridge University Press.
- Vaughan, D. (1983), Controlling Unlawful Organizational Behavior, Chicago: University of Chicago Press.
- Vaughan, D. (2007), 'Beyond Macro- and Micro-Levels of Analysis, Organizations, and the Cultural Fix', in Pontell, H.N. and Geis, G. (eds), International Handbook of White-Collar and Corporate Crime, New York: Springer.

Vaughan, D. (2012), 'Analytic Ethnography', in Hedström, P. and Bearman, P. (eds), The Oxford Handbook of Analytical Sociology, Oxford: Oxford University Press.

Yeager, P.C. (1995), 'Management, Morality, and Law: Organizational Forms and Ethical Deliberations', in Pearce, F. and Snider, L. (eds), Corporate Crime. Contemporary Debates, Toronto: Toronto University Press.

Yeager, P. C. (2007), 'Undersanding Corporate Lawbreaking: From Profit Seeking to Law Finding', in Pontell, H.N. and Geis, G. (eds), International Handbook of White-Collar and Corporate Crime, New York: Springer.

Whyte, D. (ed) (2009), Crimes of the Powerful: A Reader, Maidenhead: Open University Press.